

D106183205

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

STATE OF OHIO, ex rel.
ATTORNEY GENERAL
MICHAEL DEWINE

Plaintiff,

v.

FORM GIANT LLC, et al.

Defendants.

CASE NO: A 1307550

JUDGE LUEBBERS

AGREED CONSENT JUDGMENT
ENTRY AND ORDER

ENTERED

MAY 09 2014

PREAMBLE

This matter came to be heard upon the filing of a Complaint by the Ohio Attorney General alleging that Defendants KTM Team, LLC as successor by merger to Form Giant LLC ("KTM") and Matthew Riley ("Mr. Riley") (together, "Defendants") violated the Ohio Consumer Sales Practices Act ("CSPA"), R.C. 1345.01 *et seq.* and its Substantive Rules. By signing this Agreed Consent Judgment Entry and Order ("Consent Judgment"), Defendants consent to the entry of this Consent Judgment pursuant to R.C. 1345.07(F).

Plaintiff and Defendants have stipulated and agreed upon a basis for resolving the matters alleged in the Complaint and to the entry of this Consent Judgment without the need for trial or adjudication of any issue of law or fact. Plaintiff and Defendants have agreed that this Consent Judgment does not constitute evidence or an admission regarding the existence or non-existence of any issue, fact, or violation of any law alleged by Plaintiff.

GENERAL

14208510.1

RECEIVED
ATTORNEY GENERAL OF OHIO

JUL 10 2014

CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE

1. Defendant Form Giant, LLC was an Ohio corporation with a principal place of business at 7770 Cooper Road, Ste. 20, Cincinnati, OH 45242.
2. Defendant Mr. Riley was the Co-CEO of Defendant Form Giant LLC.
3. Defendant KTM Team, LLC, a Florida limited liability company, is the successor by merger to Form Giant, LLC.
4. Defendants are doing business in Ohio as Change-my-address.com and change-my-address.us and have a principal place of business at 10554 Success Lane, Dayton, Ohio 45459.
5. Change-my-address.com is registered to do business with the Ohio Secretary of State as a trade name of Form Giant, LLC.
6. Defendant Mr. Riley was Co-CEO of Defendant Form Giant and is currently the CEO/ Manager of Defendant KTM, and as such, controlled and directed the business activities and sales conduct of KTM, causing, personally participating in, or ratifying the acts and practices of KTM as described in the Complaint.
7. Defendants will change a consumer's address with the US Postal Service. At relevant times, the typical charge was \$19.95.
8. At relevant times, when an individual searched for "address change" in Google, change-my-address.com came up at or near the top of the page as an ad. Depending on which type of device the individual used (computer, smartphone, or tablet), the Defendants' Google advertisement was captioned "USPS® Change of Address" (on smartphones) and "USPS® Change of Address™ - change-my-address.com" (on traditional computers). On traditional computers and browsers, they then listed their services as USPS® Change

of Address™ Form Fast & Secure USPS® Mail Forwarding. Additional links for "USPS Change of Address", "\$500 in Valuable Coupons", Secure Change of Address", and "Secure COA Form" were also present.

9. Consumers then filled out the address change form on the Defendants' website, which bears some similarities to the US Postal Service's address change website.
10. After a consumer entered address change information, there was a second landing page for payment information.
11. It was on this landing page, after consumers had input address change information, that it was first disclosed that there was a \$19.95-\$29.95 fee.
12. From February 2013 through early July 2013, the landing page automatically scrolled down so that the fee did not appear without the consumer scrolling up.
13. At relevant times, Defendants failed to disclose the cost in any sales summary at the end of the transaction or in any sales confirmation.

CONCLUSIONS OF LAW

14. The Attorney General is the proper party to commence these proceedings under the authority of the CSPA, R.C. 1345.07, and by virtue of his statutory and common law authority to protect the interests of the citizens of the State of Ohio.
15. This Court has venue to hear this case pursuant to Civ.R. 3(B)(1-3) and (6).
16. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the CSPA.
17. Provisions of the CSPA, R.C. 1345.01 et seq. govern the business practices of the Defendants.

18. Defendants are "suppliers" as that term is defined in R.C. 1345.01(C) as Defendants were, at all times relevant herein, engaged in the business of effecting consumer transactions by performing services, for purposes that were primarily personal, family or household within the meaning specified in R.C. 1345.01(A) and (D), from individuals in the State of Ohio and on the internet.
19. A supplier commits unfair and deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A), by representing that the subject of a consumer transaction had sponsorship, approval, performance characteristics, accessories, uses, or benefits that it did not have.
20. A supplier commits unfair and deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A), by representing that the supplier had sponsorship, approval, or affiliation that they did not have.
21. A supplier commits unfair and deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A), and Ohio Adm. Code 109:4-3-02, by making offers on the internet in connection with consumer transactions without clearly and conspicuously disclosing, in close proximity to the words stating the offers, any material exclusions, reservations, limitations, modifications, or conditions.

ORDER

For purposes of affecting this Consent Judgment Entry and Order, it is therefore **ORDERED, ADJUDGED AND DECREED** that:

1. Plaintiff's request for a Declaratory Judgment is GRANTED; and it is therefore DECLARED that the acts and practices enumerated in Plaintiff's Complaint violate the CSPA, R.C. 1345.01 et seq., and the Substantive Rules enacted thereunder, in the manner set forth therein.
2. It is ORDERED that, in the event the payment made to Plaintiff under Paragraph 8 below is less than \$200,000 Defendants shall pay Plaintiff the difference between the amount actually received and \$200,000. Half of such sum shall be paid to the Attorney General of Washington and half to the Attorney General of Ohio.
3. Payment to Plaintiff shall be due on the 95th day after entry of this Consent Judgment and shall be made payable to the "Ohio Attorney General's Office," directed to:

Consumer Protection Section
30 E. Broad Street, Floor 14,
Columbus, OH 43215
4. It is further ORDERED that the Defendants and/or their agents, servants, representatives, salespersons, employees, successors, assigns, and all persons acting on behalf of Defendants, directly or indirectly, through any corporate device or private device, partnership or association, including any person or entity which purchases any interest in the business and continues to operate the business, in connection with any consumer transaction, are PERMANENTLY ENJOINED from committing any act or practice in violation of the CSPA, R.C. 1345.01 et seq. and the Substantive Rules enacted thereunder.

5. "Clear and Conspicuous" or "Clearly and Conspicuously," when referring to a statement, disclosure, or any other information, means that such statement, disclosure, or other information, by whatever medium communicated, is in readily understandable language and syntax and presented in such size, color, font, contrast, appearance, location, and audibility, and is sufficiently noticeable compared to other information with which it is presented that is readily apparent to the person to whom it is disclosed such that the person can read and comprehend what is being presented. If such statement, disclosure, or other information is necessary as a modification, explanation or clarification to other information with which it is presented, it must be presented in Direct Proximity to the information it modifies in a manner that is readily noticeable and understandable. As to statements, disclosures, or any other information made or presented on the Internet or other web-based applications or services, in addition to the other requirements stated herein, "Clear and Conspicuous" or "Clearly and Conspicuously," shall mean that such statements, disclosures or any other information shall be placed in locations on the same webpage as the offer, term or limitation to which it relates where it will be sufficiently prominent and readily seen, shall be labeled and presented in such a way to indicate its importance and relevance, be in text that can be easily read and understood by the reader, and be placed on the webpage in a position in Direct Proximity to the offer, term or limitation.

Further, a disclosure of information is not Clear and Conspicuous if, among other things, it is obscured by the background against which it appears or there are other distracting elements, or the net impression of the statement, disclosure, or other

information is inconsistent with, contrary to, or in mitigation of the disclosure itself.

Statements of limitation must be set out in close conjunction with the benefits described or with appropriate captions of such prominence that statements of limitation are not minimized, rendered obscure, presented in an ambiguous fashion, or intermingled with the context of the statement so as to be confusing or misleading. Nothing contrary to, inconsistent with, or in mitigation of any disclosure shall be permitted. In all instances, the disclosure shall be presented prior to the consumer incurring any financial obligation.

6. "Direct Proximity" means a term is disclosed immediately beneath, beside, or adjacent to an offer or term.
7. It is further ORDERED that the Defendants and their successors, assigns, transferees, officers, agents, servants, directors, employees, and all other persons or entities in active concert or participation with Defendants are hereby ENJOINED and restrained from engaging in the following acts and practices in connection with any internet-related businesses:
 - a. Making any misrepresentations or material omissions, either implicitly or explicitly, in the context of their sale, advertising or delivery of services including, but not limited to misrepresentations regarding their true identity or their affiliation with or relationship to the United States Postal Service.
 - b. Failing to clearly and conspicuously disclose in print at least as large and as bold as the largest, boldest print on the page the following disclosure directly proximate to the name of Defendants' business: "(Business name)" is not affiliated with the United States Postal Service (USPS). The USPS has an

independent service at (URL of USPS) where address changes can be made for a \$1.00 fee."

- c. Using the words "USPS," "U.S. Postal Service" or any other similar terms that imply either directly or indirectly an affiliation with the US Postal Service in sponsored search engine results such as Google Adwords.
- d. Failing to make the following disclosure directly above the space on Defendants' order page where consumers are required to fill in their credit card information, in print at least as large and as bold as the largest, boldest print on the order page: "Not Affiliated with U.S. Post Office."
- e. Failing to clearly and conspicuously disclose the full price charged for Defendants' services in print at least as large and as bold as the largest, boldest print on the page, directly below Defendants' business name on their landing page, and clearly and conspicuously in print at least as large and as bold as the largest, boldest print on the page, directly above the first item of information required to charge the consumer's credit card (e.g., directly above the cardholder's name, if that is the first item of information required). Such disclosure shall include the following language: "You will be charged (\$ price) for services on the credit card you provide to (Name of Business)."
- f. Failing to respond promptly to consumers' requests for fulfillment of any guarantees, refund provisions in Defendants' contracts, complaints, or other requests for service or information. For purposes of this paragraph, "promptly" shall mean within five business days. For purposes of this paragraph,

Defendants shall maintain a toll-free telephone number that is answered by a live operator without putting the consumer on hold for more than 60 seconds, except during periods where there are delays which cannot be reasonably foreseen, including but not limited to telephone service interruptions, technical difficulties or unanticipated staffing problems.

- g. Failing to maintain a record of consumers' requests for fulfillment of any guarantees or refund provisions in Defendants' contracts and complaints.
- h. Redirecting consumers to other offers, including but not limited to discounts, coupons or reduced prices for services, once they have attempted to navigate away from or close Defendants' website, provided that if other offers are presented through methods that do not involve redirecting the consumer, they shall be reasonably limited in number.
- i. Failing to include a button on their landing page that redirects the consumer to the USPS website, directly above any button that continues the consumer's purchase of service. Such button shall be in the same size, and include the same type size as the button that finalizes the purchase, and shall state as follows:
"Cancel purchase and redirect to USPS for \$1 address change."
- j. Misrepresenting the terms or availability of refunds, guarantees, money-back offers, or cancellation rights;
- k. Failing to disclose, clearly and conspicuously, all material contract terms before prospective customers have agreed to be charged for Defendants' services;
- l. Failing to provide delivery of address change services as promised;

- m. Placing charges on consumers' credit cards or debit cards without authorization to do so, or exceeding consumers' contractually agreed limitations on authorized charges.
- n. *Billing consumers after they have cancelled their contracts.*
- o. If a consumer is contractually entitled to cancellation, failing to promptly provide a refund.
- p. Failing to disclose clearly and conspicuously Defendants' cancellation and policy in the terms and conditions posted on their website and in any written terms and conditions provided to the consumer; and
- q. Violating the CSPA, R.C. 1345.01 et seq.;

Restitution

- 8. Defendants shall provide up to \$3,000,000.00 (the "Nationwide Restitution Pool") as nationwide restitution to consumers, pursuant to the claims process described below. Consumers shall be entitled to make claims from the Nationwide Restitution Pool during the 90-day period following entry of this Consent Decree. In the event that payments to eligible consumers pursuant to this Section exceed \$3,000,000.00, Defendants shall distribute restitution to claimants on a pro rata basis. In the event that payment to eligible consumers is less than \$3,000,000, the sum of any funds remaining in the Nationwide Restitution Pool up to \$350,000.00 shall be paid to the Attorneys General of Washington and Ohio, half of which shall be provided to each state. The Attorney General shall use the funds for recovery of its costs and attorneys' fees in investigating this matter, future monitoring and enforcement of this Consent Judgment,

future enforcement of R.C. 1345.01 et seq., or for any lawful purpose in the discharge of the Attorney General's duties at the sole discretion of the Attorney General.

9. Defendants hereby agree to provide payment for consumer restitution as follows:

a. Within 15 days of the Effective Date of this Consent Decree, Defendants shall provide all prior customers who have not already received a full refund or full chargeback, and who were charged for any change of address services on or prior to the Effective Date of this Consent Judgment notice of their ability to make a claim for a full refund, along with instructions for making such a claim. Such notice will be sent to customers as their last known email addresses. The following shall apply to such emails:

- i. The "display name" in the email "FROM" line will be "Form Giant Change-of- Address Services"
- ii. The subject line of the email will read "IMPORTANT LEGAL NOTICE REGARDING REFUND CLAIM."
- iii. Defendants shall make reasonable efforts to avoid having emails sent to "junk" or "spam" folders, or otherwise filtered.
- iv. If an email "bounces back," Defendants shall provide the notice by U.S. Mail postcard to the mailing address associated with the consumer's account record, if available. The postcard shall contain language that is the same as, or substantially similar to, the email notice, subject to space limitation.
- v. The body of the email shall state as follows:

Dear Consumer:

Our records reveal that you purchased change-of-address services through our company. Pursuant to an agreement settling a lawsuit by the Washington State Attorney General's Office and the Ohio Attorney General's Office relating to those services, you are entitled to a refund of all but \$1.00 of the amount you paid.

To obtain your refund, you can fill out the online claim form at (URL) or call us, toll-free, at (phone number). In order to make a valid claim, you must either call us or fill out the claim form by (add date—90 days after entry of Consent Decree). Refunds will be either credited to the credit card you used to purchase services from our company, if the card is still on file with us, or through a check that will be mailed to you. Refunds will be provided by (add date—95 days after entry of Consent Decree). The amount of the refund will be based upon the total number of refund claims our company receives from consumers. If you have any questions about this refund program and you are a resident of Ohio or any state other than Washington, you may contact the Ohio Attorney General's Office at (phone number). If you are a Washington State resident, you may contact the Washington State Attorney General's Office at (phone number).

Sincerely,

Form Giant LLC, doing business as Change-my-address.com

- b. If Defendants are not contacted by the prior customers to whom emails were sent pursuant to paragraph 9 (a) above within 30 days of providing email notice, Defendants shall send a second email to those customers who have not responded. The body of the email shall read the same as the email body described in Paragraph 9(a)(v), except that the response date for making a valid

claim shall be 60 days after the entry of the Consent Decree, which date shall be stated in the email, and the "display" name in the FROM line shall read the same as described in Paragraph 9(a)(i). The subject line of the email shall state as follows: "SECOND NOTICE--IMPORTANT LEGAL NOTICE REGARDING REFUND CLAIM."

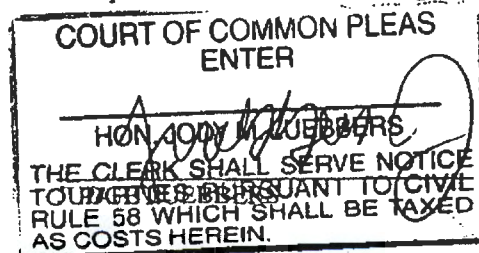
- c. Defendants shall fully refund all customers who purchased address change services from them and who make a claim pursuant to the process described above. Such refunds shall be made within 95 days of the entry of this Consent Judgment, and shall be in the form of a credit to the consumer's credit card for the amount paid to Defendants. If Defendants do not possess credit card information for the consumer, Defendants shall instead mail a check, drawn to the order of the consumer for the full amount paid, and shall mail the check to the consumer's address. If Defendants have already provided a refund to the consumer, then no refund shall be required.
- d. 45 days after the entry of this Consent Judgment, Defendants shall provide status reports on the number of claims made and the identity of the claimants. At the conclusion of the 95-day period following entry of this Consent Judgment, Defendants shall provide a full accounting to Plaintiff, identifying the consumers who received refunds (name, address, manner of refund (i.e. credit card credit, check, etc.), email and telephone number), the amounts of the refunds, and the dates the refunds were made. Defendants shall also provide a full accounting to Plaintiff of those consumers who were provided refunds prior to the entry of

- (this Consent Judgment, including name, address, email and telephone number, amount of refund, manner (i.e. credit card credit, check, etc.) and date of refund.
- e. Defendants shall also pay all Settlement Administration Costs and any Settlement Administration Costs shall have no effect on and will be completely independent of the Nationwide Restitution Pool, and will not reduce the amount of restitution received by consumers and/or Plaintiff.
- i. Settlement Administration Costs shall mean all fees and expenses incurred as a result of the procedures and processes required by this Consent Judgment, as ordered by the Court, and/or as agreed to by the Parties.
10. Defendants shall provide full refunds, less \$1.00, to consumers who complain to the Ohio Attorney General about any of the practices alleged in the Attorney General's Complaint, regardless of the date those complaints are received. Refunds owing under this provision shall be made within 14 days of Defendants' receipt of written notice of the consumers' complaints by the Attorney General.
11. It is further ORDERED that in the event the Ohio Attorney General must initiate legal action or incur any costs to compel the Defendants to abide by this Consent Judgment, upon proof of the violation, the Defendants shall be liable to the Ohio Attorney General for any such costs associated with proving that violation, including, but not limited to, a reasonable sum for attorneys' fees.

12. It is further ORDERED that the Defendants shall not represent directly or indirectly or in any way whatsoever that the Court or the Ohio Attorney General has sanctioned, condoned, or approved any part or aspect of the Defendants' business operation.
13. It is further ORDERED that the Defendants shall negotiate in good faith, through the office of the Attorney General, any consumer complaints filed with or received by the Attorney General concerning the Defendants' conduct occurring prior to or after the Effective Date of this Consent Judgment, which are brought by consumers that are discovered after entering into this Consent Judgment.
14. It is further ORDERED that the Defendants shall pay all court costs associated with this matter.
15. Nothing in this Consent Judgment shall be construed as to limit or bar any other governmental entity or consumer from pursuing other available remedies against Defendants.
16. This Court shall retain jurisdiction to enforce compliance with this Consent Judgment.

Date:

5/9/14



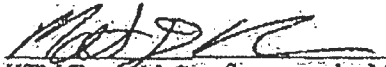
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5/9/14
Date



KTM Team, LLC as Successor by Merger
to Form Giant, LLC
By: Matthew D. Riley
Title: CEO/Manager

5/8/14
Date



Matthew D. Riley Date

5/8/14

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